SOUTHERN D	ES DISTRICT COURT ISTRICT OF NEW YOR		
4 - 2 - 2 - 2 - 2 - 2 - 2 - 2 - 2 - 2 -		·X	21 MC 100 (AKH)
IN RE WORLD SITE LITIGATI	TRADE CENTER DISA ON	STER	ORDER TO SHOW CAUSE FOR
9 4 8 4 4 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9		X	ATTORNEY FEE HEARING
Up	on the affirmation of Rob	ert H. Wolff, duly a	ffirmed on August 1, 2013 and
upon the due de	liberation of this Court.		
OR	DERED, that NAPOLI,	BERN, RIPKA S	HKOLNIK, LLP, show cause
before a motion	term of this Court, at Ro	oom 14D, United S	States Courthouse, 500 Pearl
Street, in the City	, County and State of N	lew York, on	, 2013, at
o'clock in the	noon thereof,	or as soon thereafte	r as counsel may be heard, why
an order should no	t be issued setting this mat	ter down for a fee he	earing to determine the equitable
division of legal fe	es between ROSENBER	G, MINC, FALKOFF	& WOLFF, LLP and NAPOLI,
BERN, RIPKA SH	KOLNIK, LLP, and for suc	h other and further	relief as to this Court may seem
just and proper; ar	nd it is further		
ORI	DERED, that personal deliv	very of a copy of this	order, annexed Affirmation and
Exhibits upon NAF	OLI, BERN, RIPKA SHKO	DLNIK, LLP, on or b	efore the o'clock in the
afternoon, on Augu	ust , 2013, shall b	e deemed good and	sufficient service thereof.
DATED: New	/ York, New York		
ISSUED:	M		
	_		
		United States D	strict Judge

ROSENBERG, MINC, FALKOFF & WOLFF 122 East 42nd Street, Suite 3800 New York, New York 10168 Tel. no. 212-697-9280 Fax no. 212-697-9284 ROBERT H. WOLFF (RHW6812) Counsel for Plaintiff ANA TAHA

21 MC 100 (AKH)

SOUTHERN DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
IN RE WORLD TRADE CENTER DISASTER SITE LITIGATION	
X	

AFFIRMATION IN SUPPORT OF ORDER TO SHOW CAUSE FOR ATTORNEY FEE HEARING

In support for his order to show cause for an order setting this matter down for an attorney fee hearing ROSENBERG, MINC, FALKOFF & WOLFF respectfully represents as follows:

That your affirmant is a member of the firm of ROSENBERG, MINC, FALKOFF & WOLFF, LLP, referring attorneys for the said plaintiff, ANA TAHA, and submits this affirmation in support of the within application for an order setting this matter down for a fee hearing to determine the equitable division of legal fees between, ROSENBERG, MINC, FALKOFF & WOLFF, LLP and NAPOLI, BERN, RIPKA SHKOLNIK, LLP, and for such other and further relief as to this Court may seem just and proper.

- 1) This is a negligence action to recover damages for serious injuries sustained by Plaintiff, ANA TAHA, as a result of toxic exposure that took place at the WTC ground zero site.
- 2) Initially, the plaintiff retained our office, in or around March 2002. Immediately thereafter, our office filed a motion to file a late notice of claim. Exhibit A. Our office represented Ms. Taha at a 50-h hearing on June 3, 2002. A summons and complaint was filed on June 11, 2002. Exhibit B.

- 3) The Taha matter was consolidated with all the World Trade Center Disaster Site Litigation as a "Master Complaint" and removed to United States District Court Southern District of New York. At some point in or about September 2004, the firm of WORBY GRONER EDELMAN & NAPOLI BERN LLP was appointed as plaintiffs' liaison counsel.
- 4) Commencing some time in September 2004, the firm of WORBY GRONER EDELMAN & NAPOLI BERN LLP provided general updates on the litigation in the Southern District to our office as the plaintiffs' liaison counsel. Said updates continued until approximately June 2007. Exhibit C are copies of the transmittal cover letters/facsimiles from WORBY GRONER EDELMAN & NAPOLI BERN LLP to our firm from September 2004 to June 2007.
- 5) WORBY GRONER EDELMAN & NAPOLI BERN LLP addressed a letter specifically to our firm dated March 15, 2007. Said letter provided a detailed status of the litigation. Exhibit D.
- 6) On May 25, 2006, our office was advised by Ms. Bernice Sinder of "the call center" at WORBY GRONER EDELMAN & NAPOLI BERN LLP that she had discussed the Taha matter with a managing partner. She indicated that she was advised that ROSENBERG, MINC, FALKOFF & WOLFF were the "co-counsel" and WORBY GRONER EDELMAN & NAPOLI BERN LLP were the "lead counsel." She further stated that the designation is essentially the same as ROSENBERG, MINC, FALKOFF & WOLFF being the referring attorneys.
- 7) On June 20, 2008, our office received a communication from WORBY GRONER EDELMAN & NAPOLI BERN LLP requesting a status. Exhibit E.
- 8) WORBY GRONER EDELMAN & NAPOLI BERN LLP wrote our office on July 10, 2008 seeking medical updates on Ms. Taha. Exhibit F. Ms. Taha indicated to our office that she had mailed WORBY GRONER EDELMAN & NAPOLI BERN LLP an entire package regarding her upper respiratory injuries.

- 9) In July 2011, our office was advised by Ms. Taha that she received forty (40%) percent of her settlement. Our office attempted to call WORBY GRONER EDELMAN & NAPOLI BERN LLP in order to ascertain the status of our referral fee. Sandra (last name unknown) indicated that the firm was now NAPOLI BERN, RIPKA, SHKOLNIK LLP, located at 350 Fifth Avenue, Suite 7413, NYC. She further stated that she would forward the message to the litigation counsel, Christopher Lopalo. Another call was placed and a message left for Sandra in August 2011. However, neither Sandra nor Mr. Lopalo ever returned the phone calls.
- 10) Our office wrote to the attention of Christopher Lopalo, Esq. at NAPOLI, BERN, RIPKA, SHKOLNIK LLP on October 10, 2011. Exhibit G. When our office learned that Ms. Taha received the full payment on her settlement, another letter was sent on May 29, 2012. Exhibit H.
- 11) A letter enclosing a stub reflecting a partial payment and attorney's fee in the amount of Seven Thousand Eight Hundred Forty (\$7,840.98) Dollars and Ninety-Eight Cents was forwarded to NAPOLI, BERN, RIPKA, SHKOLNIK LLP on October 22, 2012. Said letter requested a full accounting of all sums paid out to Ms. Taha and demand for referral fees. Exhibit I.
- 12) In light of no communication forthcoming from NAPOLI, BERN, RIPKA, SHKOLNIK LLP, a final letter was written on November 26, 2012. Exhibit J.
- 13) To date there has been no response to any of our requests for an accounting and referral fees. Thus, the instant application is necessary.

[The remainder of this page intentionally left blank]

WHEREFORE, it is respectfully requested that this honorable court issue an Order setting this matter down for a fee hearing to determine the equitable division of legal fees between ROSENBERG, MINC, FALKOFF & WOLFF, LLP and NAPOLI, BERN, RIPKA, SHKOLNIK LLP, with such other, further and different relief as to this court seems just and proper.

Dated: New York, New York August 1, 2013

FALKOFF & WOLFF ROSENBERG: MIN

122 East 42 Street, Suite 3800 WOLFE (RHW6812)

New York, New York 10168

Tel. no. 212-697-9280 Fax no. 212-697-9284 Counsel for Plaintiff

ANA TAHA

EXHIBIT "(A)

At I.A.S. Part 5, of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York, on the day of March, 2002

		ady or major, 2002
PRESENT:		
	ON. MICHARE D. STAC	
ANNA TAHA, For an Order P	f the Application of Petitioner, ursuant to General Municipal Law, Authorizing Service of a Late	ORDER TO SHOW CAUSE Index No. 104845/02
-ag	ainst-	
CITY OF NEW	YORK,	
	Respondent.	~
		on of STEVEN C. FALKOFF, ESQ.,
the 4 th day of Mar	ch, 2002, upon a copy of petitioner's	proposed Notice of Claim, and upon
the due deliberat	ion of this Court.	to reten publing
LET the sa	aid respondent, CITY OF NEW YOF	RK, show cause before 🚓 S. Part
, of the Sup	reme Court of the State of New Yor	k, held in and for the County of New
York, at the Cour	thouse located at 60 Centre Street	k, held in and for the County of New (1) 307 New York, New York, on the 27
day of March, 200	02, at 9:30 o'clock in the forenoon o	of that day, or as soon thereafter as

counsel may be heard, why an Order should not be issued pursuant to General Municipal Law, Section 50-e(5) authorizing the said petitioner to serve a Late Notice of Claim in the form annexed hereto, and for such other and further relief as to this Court may seem just and proper;

SUFFICIENT CAUSE APPEARING HEREIN;

LET, personal service of a copy of this Order and Affirmation and Exhibits upon the said respondent, CITY OF NEW YORK, at their address, 59 Maiden Lane, New York, New York 10038, on or before the ______ day of March, 2002 shall be deemed good and sufficient service.

ENTER

J.S.C.

MICHAEL D. STALLMAN J.S.C.

THE RESIDENCE OF THE PROPERTY OF THE PROPERTY

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK	,
In the Matter of the Application of ANNA TAHA,	AFFIRMATION IN SUPPORT
Petitioner,	Index No.: 104845/02
For an Order Pursuant to General Municipal Law, Section 50-e(5) Authorizing Service of a Late Notice of Claim	
-against-	
CITY OF NEW YORK,	
Respondent.	

STEVEN C. FALKOFF, an attorney-at-law, duly licensed and admitted to practice before the Courts of the State of New York, affirms the following pursuant to CPLR 2106:

That your affirmant is a member of the firm of ROSENBERG, MINC, FALKOFF & WOLFF, LLP, attorneys for petitioner in the within matter, and submits this affirmation in support of the within application for an Order pursuant to General Municipal Law, Section 50-e(5) authorizing the service of a Late Notice of Claim on behalf of the said petitioner, upon the said respondent, CITY OF NEW YORK.

This is a proposed action sounding in negligence arising out of petitioners involvement as a police officer at the World Trade Center site following the September 11, 2001 terrorist attacks. Anna Taja, an officer from the 6th Precinct was assigned to active duty from September 13, 2001 until December 2, 2001 and then again on December 17, 2001. During this time period Ms. Taja was not provided with proper breathing and respiratory apparatus, and due to this failure she has developed chronic asthma,

emphysema and a granuloma on her left lung. At the present time, although working, Ms. Taha is limited to desk duties.

Annexed hereto as an Exhibit is the Affidavit of ANNA TAHA, duly sworn to the 4th day of March, 2002, setting forth the facts and circumstances herein.

Thereafter on or about March 4, 2002, she retained ROSENBERG MINC FALKOFF & WOLFF LLP as her attorneys in order to investigate this claim.

Needless to say, more than ninety (90) days has elapsed since the said petitioner was exposed to the toxicity of the WTC worksite. Accordingly, the first order of business is to bring the within application seeking leave to file a Late Notice of Claim in the form annexed hereto. Also, annexed hereto as an Exhibit, is a copy of the proposed Notice of Claim.

At the outset, it is noted that, although the petitioner is late in filing a Notice of Claim, it is still well within the one year and ninety day Statute of Limitations.

It is well settled that a Trial Court is granted broad discretion in determining whether to allow the filing of a Late Notice of Claim. Ali v. Bunny Realty Corp., 676 N.Y.S.2d 166 (1st Dept., 1998). Leave to file a Late Notice of Claim should be freely granted upon determination of all factors, including an analysis of the reasons for the delay in seeking to file a Late Notice of Claim. Dickerson v. New York City Housing Authority, N.Y.S.2d 834 (2nd Dept., 1997). As has been noted, the said petitioner was not aware of her medical conditions until mid-January and thereafter sought PBA advise. It was not until a few short weeks ago that Ms. Taha was told by the PBA attorneys that they could not be of assistance to her. Thereafter she was involved in visits to her various doctors in order to

determine what needed to be done and in order to make arrangements to have her medical conditions treated. Quite obviously, a person's priority should be their medical care and treatment and not the filing of a Late Notice of Claim. Thereafter, she retained an attorney and this application, it is submitted, is being brought as expeditiously as possible.

This case is unique in that the existence and preservation of records and the City's direct involvement in the daily affairs at the WTC since September 11, 2001, afford the municipality a unique opportunity to conduct a meaningful investigation into the facts and circumstances which give rise to a claim despite the passage of time. Thus like a medical malpractice case, it is for this reason that Courts have been willing to grant such applications even after the passage of a great deal of time.

Kurz v. New York City Health And Hospitals Corporation, 571 N.Y.S.2d 533 (2nd Dept., 1991); Sloane v. County of Westchester, 575 N.Y.S.2d 310 (2nd Dept., 1991); Matter of Newson, 448 N.Y.S.2d 224 (2nd Dept., 1982); Spaulding v. New York City Health And Hospitals Corporation, 620 N.Y.S.2d 53 (1st Dept., 1994); Strobel v. County of Lewis, 537 N.Y.S.2d 707 (4th Dept., 1989).

Accordingly, for all of the reasons set forth above, including the interests of justice, the relatively short delay beyond the ninety (90) day time period; the expeditious manner in which the petitioner acted once she became aware of the existence of a claim and, most importantly, the utter and complete absence of any prejudice to the said respondent, it is respectfully requested that the within application be granted.

Annexed hereto as Exhibits are copies of the proposed Notice of Claim, as well as

the Affidavit of ANA TAHA.

There has been no prior application for the within requested relief.

WHEREFORE, it is respectfully requested that the within application be granted.

Dated: New York, New York

March 12, 2002

STEVEN C. FALKOFF

UNIFORM COURT RULE 130-1.1-a CERTIFICATION

STATE OF NEW YORK) : SS. COUNTY OF NEW YORK)

I, the undersigned, an attorney-at-law duly admitted to practice before the Courts of the State of New York, state that I am a Member of the firm of ROSENBERG, MINC, FALKOFF & WOLFF, LLP, the attorneys for the Petitioner in the within proceeding; that I have read the foregoing ORDER TO SHOW CAUSE, AFFIRMATION IN SUPPORT, THE PROPOSED LATE NOTICE OF CLAIM, AND EXHIBITS ANNEXED THERETO, and the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true.

Dated: New York, New York

March 12, 2002

STEVEN CATALKOFF

EXHIBIT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of ANNA TAHA,

AFFIDAVIT

Petitioner,

Index No.: 104845/02

For an Order Pursuant to General Municipal Law, Section 50-e(5) Authorizing Service of a Late Notice of Claim

-against-

CITY OF NEW YORK,

															R	е	s	p	0	n	d	e	n	t	•								
-	 	 	-	-	 	_	-	-	-	_	-	-	-	-	-	-	-	-	-	_	-	-	-	_	-	_	_	-	_	_	_	-:	X

ANNA TAHA, being duly sworn deposes and says:

That I presently reside at 32-89 36^{TM} Street, Astoria, NY 11106.

That I was born on December 13, 1964.

That on September 13, 2001, I was called to active duty as a police officer from the 6th Precinct at the World Trade Center disaster site. From September 13, 2001 until December 2, 2001, I worked 12 hours per day at the disaster site. My last day of active duty at the site was December 17, 2001. During this time I inhaled various toxic fumes and chemicals. I was not provided with proper respiratory or protective equipment. The first week or so I was only given a paper mask to wear. Thereafter, some respirators were provided however I could not wear same due to my job

responsibilities.

I have bee informed by my Doctors that I have developed emphysema, asthma and a granuloma on my lung as a result of my exposure. I currently am restricted to light duty/desk duty and I am on a variety of medications including ADVAIR, SINGULAIR and PROVENTIL. I have been advised that I will need continued medical care and treatment for these conditions.

That until December 17, 2001 I had no knowledge of any medical condition except I was having a hard time breathing. Thereafter, further medical tests have confirmed the existence of the above mentioned conditions.

That I sought the advise of counsel in January with the PBA but was just recently told by PBA officials that they could not help me. Therefore, on March 4, 2002, I sought new counsel and am at this time applying for leave to make my claim against the City of New York.

That I believe that I have a true and meritorious claim.

WHEREFORE I respectfully request that this application be granted in it's entirety.

Dated: New York, New York March 4, 2002

ANNA TAHA

State of New York)
County of New York) ss:

On the 4^{TH} Day of March, 2002, before me personally appeared ANNA TAHA, who executed the foregoing affidavit and it is acknowledged that she executed the same.

NOTARY PUBLIC

STEVEN C. FALKOFF
Notary Public, State of New York
No. 4816621
Qualified in Westchester County
Commission Expires March 30, 2002

EXHIBIT

In the Matter of the Claim of

ANA TAHA

against
THE CITY OF NEW YORK

TO: COMPTROLLER OF THE CITY OF NEW YORK

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claim and demand against the City c

New York, as follows:

[Office of the Comptroller requests the following additional information: in Section 2, specific defect (e.g. pothole) if applicable; in Section 3, stre
address wherever possible.]

1. The name and post-office address of each claimant and claimant's attorney is:

ROSENBERG MINC FALKOFF & WOLFF 122 East 42nd Street Suite 3800 New York, N.Y. 10168

ANA TAHA
32-89 36th Street
Apt. #3
Astoria, N.Y. 11106

2. The nature of the claim:

PERSONAL INJURY
NEGLIGENCE
SPECIAL DAMAGES
ECONOMNIC LOSS/LOSS OF EARNINGS

PAST, PRESENT & FUTURE PAIN & SURFERING

3. The time when, the place where and the manner in which the claim arose:

The occurrence took place from September 13, 2000 to December 2, 2001 and also on December 17, 2001 at the World Trade Center Worksite, the claimant's injuries were a result of the City of New York's failure to provide proper respiratory and/or breathing equipment apparatus; the City of New York also failed to provide sufficient precautions and/or safety practices to the claimant with respect to air quality at the worksite; the City of New York failed to provide sufficient respirators; the City of New York was negligent and/or careless in failing to provide proper safety devices for which to perform her work.

4. The items of damage or injuries claimed are (include dollar amounts)

Claimant, ANA TAHA, suffered chronic asthma, emphysema, granuloma on the left lung, internal and external injuries the full extent of which are unknown

EXHIBIT "B"

Endorse This INDEX NUMBER ON All Papers and advise your adversary of the number assigned. Sec. 202.5, Uniform Rules Of Trial Courts

CHICA

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INDEX NUMBER FEE

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Supreme Court of the State of New York

County of NEW YORK

ANA L. TAHA,

Plaiatid

eguiast

THE CITY OF NEW YORK,

Defendant

Index No. 112511

Plaintiff designates
NEW YORK

County as the place of tri

The basis of the venue is Situs of the Occurrence

Bunimana

Plaintiff resides at 32-89 36th Street Astoria, New York County of QUEENS

To the above named Defendant

HILL REPUBLICATION SUMMITTEE to answer the complaint in this action and to a copy of your answer, or, if the complaint is not served with this summons, to serve a notice appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, excutof the day of service (or within 30 days after the service is complete if this summons is not person delivered to you within the State of New York); and in case of your failure to appear or answer, ment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, New York
June 5th, 2002

Deleadant's address: NEW YORK

COUNTY CLERICO OFFICE

JUN 1 1 2002

A. C. ARED

ROSENBERG, MINC, FALKOFF & WOLFF, LLP
Accorner(s) for Plaintiff

Post Office Address

122 East 42nd Street - Suite 3800 New York, New York 10168 (212) 697-9280

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK	
ANA L. TAHA,	PLAINTIFF'S VERIFIED COMPLAINT
Plaintiff, -against-	Index No.
THE CITY OF NEW YORK,	
Defendant.	

Plaintiff, ANA L. TAHA, by her attorneys, ROSENBERG, MINC, FALKOFF & WOLFF, LLP., complaining of the defendant, THE CITY OF NEW YORK, respectfully shows to this Court and alleges, as follows:

FIRST: Upon information and belief, that at all times hereinafter mentioned, the defendant, THE CITY OF NEW YORK, (hereinafter referred to as "the CITY"), was and still is a domestic municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York.

SECOND: That heretofore pursuant by Order of the Honorable Justice Stallman this Court directed a Notice of Claim to be filed pursuant to Section 50-(e) of the General Municipal Law.

THIRD: That on or about the 3rd day of June, 2002, the plaintiff was duly examined, under oath, at the Offices of

Schiavetti, Corgan, attorneys for the defendant, THE CITY OF NEW YORK, pursuant to the General Municipal Law, Section $50\,(h)$.

FOURTH: That there was a duty imposed upon the defendant, CITY, to provide proper equipment and to implement sufficient precautions and safety practices to said plaintiff while she was working at the World Trade Center work site from September 13th, 2001 to December 2nd 2001, as well as on December 17th, 2001.

FIFTH: That at all times hereinafter mentioned, the said plaintiff, ANA L. TAHA, was working for the NEW YORK CITY POLICE DEPARTMENT at the World Trade Center clean-up work site from September 13th, 2001 through December 2nd, 2001, as well as on December 17th, 2001.

SIXTH: That as a result of the negligence, carelessness and recklessness of the defendant, CITY, this plaintiff was caused to suffer granuloma of the left lung, chronic asthma and emphysema.

SEVENTH: That the said occurrence arose solely by reason of the carelessness, recklessness and negligence of the defendant in its operation, management and control of the aforesaid World Trade Center work site; in permitting and allowing insufficient precautions and safety practices to pursue throughout the work site; in failing to provide this plaintiff

with proper respiratory and/or breathing equipment apparatus; in failing to provide sufficient precautions and/or safety practices to this plaintiff with respect to the air quality at the work site; in failing to provide this plaintiff with proper respirators and other proper safety devices for which to perform her work; in failing to provide proper supervision, control and operation of the said work site; in failing to have proper warning devices and other equipment with respect to insufficient air quality at the work site; and that the defendant was otherwise negligent herein.

EIGHTH: That the said plaintiff, ANA L. TAHA, in no way contributed to the happening of the aforesaid occurrence.

NINTH: That by reason of the negligence of the defendant, as aforesaid, this plaintiff suffered severe, grave and serious personal injuries with accompanying pain and agony of body and mind; that she became and continues to be sick, sore, lame and disabled; that she was and will be compelled to expand great sums of money for medical care and medicine, in an effort to cure herself; that she was and will be prevented from attending to her usual duties and occupation; all to her damage in the sum of TEN MILLION (\$10,000,000.00) DOLLARS.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of TEN MILLION (\$10,000,000.00) DOLLARS, together with

the costs and disbursements of this action.

Dated: New York, New York
June 5th, 2002

Yours, etc.,

ROSENBERG, MINC, HALKOFF & WOLFF, LLP

By:

Attorneys for Plaintiff

ANA TAHA

Office & P.O. Address

KOBERT H.

122 East 42nd Street - Suite 3800

New York, New York 10168

(212) 697-9280

Our File No. 27137

ATTORNEY'S VERIFICATION

STATE OF NEW YORK) : SS.
COUNTY OF NEW YORK)

ROBERT H. WOLFF, an attorney-at-law, duly licensed and admitted to practice before the Courts of the State of New York, a member of the law firm of ROSENBERG, MINC, FALKOFF & WOLFF, LLP., attorneys for the plaintiff herein, makes the following affirmation pursuant to CPLR 2106:

That I have read the foregoing Complaint and know the contents thereof; that the same are true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

That the reason this verification is not made by plaintiff is because plaintiff is not within the County of New York, where your affirmant maintains his office.

That the source of your affirmant's knowledge is based upon investigations, reports and communications had, with plaintiff.

Dated: New York, New York
June 5th, 2002

UNIFORM COURT RULE 130-1.1-a CERTIFICATION

I, the undersigned, an attorney-at-law duly admitted to practice in the Courts of New York State, state that I am a member of the firm of ROSENBERG, MINC, FALKOFF & WOLFF, LLP., the attorneys for Plaintiff in the within action; that I have read the foregoing Complaint, and the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true.

Dated:

New York, New York

June 5th, 2002

EXHIBIT "C"

Case 1:21-mc 00100-AKH Document 3089 Filed 08/21/13 Page 30 of 125 Worby Groner Edelman & Napoli Bern LLP

David E. Worby *
William H. Groner * f
Michael R. Edelman *

Richard S. Vecchio.*
Michael L. Taub *
Howard G. Frederick *
John Raymond Mechmann, Jr. *

Charles N. Rock *
Sam Rosmarin *
Hon. Carl A. Vergari *
Harvey B. Ginsberg *
Paul J. Campson * f ‡

* Admitted In New York
f Admitted In New Jersey
† Admitted In Wisconsin
¶ Admitted In Pennsylvania
£ Admitted In Florida
♣ Admitted In Oklahoma
‡ Admitted In District of Columbia
§ Of Counsel

A Partnership of Limited Liability Partnerships

115 Broadway New York, New York 10006 (877) 982-4376

www.wgenb.com

TALLA

Marc Jay Bern * †
Paul J. Napoli *
Jeffrey A. Guzman *
Steven Krentsel *

Melinda R. Alexis-Hayes
Peter L. Benza *
W. Steven Berman f ¶
Nicole V. Gurkin *
Christopher R. LoPalo *
Thomas W. Raleigh * f
Ernest Reece *
Denise A. Rubin *
Jeremy Thurman ¥
Joy R. Simon *

Richard Corcoran § £ Mario D'Angelo § * Brian Guillorn § * Noble McIntyre § ¥

TO:

ALL PLAINTIFFS' COUNSEL

FROM:

PAUL J. NAPOLI

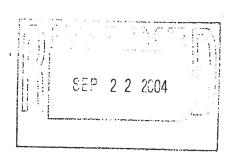
DATE:

September 20, 2004

RE:

WORLD TRADE CENTER

Enclosed please find Orders from Judge Hellerstein, dated 9/20/04, 9/9/04 and 8/10/04, along with a Consent to Change Attorney Stipulation dated 8/11/04, and two Stipulations of Dismissal dated 3/31/04 and 419/04.



Wertheimer Associates, P.C.: 225 Broadway
New York, NY 10007
212-964-1860
212-349-2439 (f)
robinwertheimer@hotmail.com

đ,

Daly, Bamundo, Dalton & Schermerhorn: 111 John Street, Suite 1100 New York, NY 10038 212-608-8840 212-608-8039 (f) irs@dbzslaw.com

Friedman, Friedman, Chiaravalloti & Giannini: 2 Rector Street, 21st Floor
New York, NY 10006
212-267-0380
212-962-1199 (f)
sms@ff-law.com

Sacks & Sacks: 150 Broadway New York, NY 10038 212-964-5570 212-349-2141 (f) wtcmail@sacks-sacks.com

Jack Angelou, Esq. 2213 Jacqueline Avenue North Bellmore, NY 11710 516-721-1199

Oshman, Helfenstein & Mirisola: 90 William Street, Floor 6
New York, NY 10038
212-233-2100
212-964-8656 (f)
oshman@lawyer.com

Ryan Goldstein:
40 Exchange Place, Suite 1205
New York, NY 10005
212-422-1020
212-422-1069 (f)
rgoldsteinlaw@aol.com

Palmeri, Gaven & Soberman: 55 John Street
New York, NY 10038
212-608-1717
212-732-0908 (f)
pglaw@palmeri-gaven.com

Sullivan, Papain, Block, McGrath & Cannavo: 120 Broadway
New York, NY 10271
212-732-9000
212-266-4141 (f)
pmarber@triallaw1.com

Willard R. Pratt III: 1708 Main Sylvan Beach, NY 13157 315-762-4711 315-829-4066 (f)

Rosenberg, Minc, Falkoff & Wolfe: 122 East 42nd Street Rm 4700 New York, NY 10168 212-697-9280 212-697-9284 (f) rwolff@rmfwlaw.com

Barton, Barton & Plotkin, LLP: 420 Lexington Avenue Rm 1918 New York, NY 10170 212-687-6262 212-697-3043 (f)

Worby, Groner & Edelman, LLP: 11 Martine Avenue White Plains, NY 10606 914-686-3700 914-686-8080 (f) bgroner@wgelaw.com

Case 1:21-mc00100-Ach Document 3089 Filed 08/21/13 Page 33 of 125

Charles N. Rock *
Sam Rosmarin *
Hon. Carl A. Vergari *
Harvey B. Ginsberg *
Paul J. Campson * f ‡

* Admitted In New York
f Admitted In New Jersey
† Admitted In Wisconsin
¶ Admitted In Pennsylvania
£ Admitted In Florida
¥ Admitted In Oklahoma
‡ Admitted In District of Columbia
§ Of Counsel

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115 Broadway

New York, New York 10006

(877) 982-4376

www.wgenb.com

Marc Jay Bern * †
Paul J. Napoli *
Jeffrey A. Guzman *
Steven Krentsel *

Melinda R. Alexis-Hayes *
Peter L. Benza *
W. Steven Berman f ¶
Nicole V. Gurkin *
Christopher R. LoPalo *
Thomas W. Raleigh * f
Ernest Reece *
Denise A. Rubin *
Jeremy Thurman ¥
Joy R. Simon *

Richard Corcoran § £ Mario D'Angelo § * Brian Guillorn § * Noble McIntyre § ¥

TO:

ALL PLAINTIFFS' COUNSEL

FROM:

PAUL J. NAPOLI

DATE:

OCTOBER 20, 2004

RE:

WORLD TRADE CENTER

Enclosed please find an Order from Judge Hellerstein, dated 10/20/04.

OCT 2 1 2004

TAha

Wertheimer Associates, P.C.: 225 Broadway
New York, NY 10007
212-964-1860
212-349-2439 (f)
robinwertheimer@hotmail.com

Daly, Bamundo, Dalton & Schermerhorn: 111 John Street, Suite 1100 New York, NY 10038 212-608-8840 212-608-8039 (f) jrs@dbzslaw.com

Friedman, Friedman, Chiaravalloti & Giannini: 2 Rector Street, 21st Floor
New York, NY 10006
212-267-0380
212-962-1199 (f)
sms@ff-law.com

Sacks & Sacks: 150 Broadway New York, NY 10038 212-964-5570 212-349-2141 (f) wtcmail@sacks-sacks.com

Jack Angelou, Esq. 2213 Jacqueline Avenue North Bellmore, NY 11710 516-721-1199

Oshman, Helfenstein & Mirisola: 90 William Street, Floor 6
New York, NY 10038
212-233-2100
212-964-8656 (f)
oshman@lawyer.com

Ryan Goldstein: 40 Exchange Place, Suite 1205 New York, NY 10005 212-422-1020 212-422-1069 (f) rgoldsteinlaw@aol.com

Palmeri, Gaven & Soberman: 55 John Street
New York, NY 10038
212-608-1717
212-732-0908 (f)
pglaw@palmeri-gaven.com

Sullivan, Papain, Block, McGrath & Cannavo: 120 Broadway
New York, NY 10271
212-732-9000
212-266-4141 (f)
pmarber@triallaw1.com

Willard R. Pratt III: 1708 Main Sylvan Beach, NY 13157 315-762-4711 315-829-4066 (f)

Rosenberg, Minc, Falkoff & Wolfe: 122 East 42nd Street Rm 4700 New York, NY 10168 212-697-9280 212-697-9284 (f) rwolff@rmfwlaw.com

Barton, Barton & Plotkin, LLP: 420 Lexington Avenue Rm 1918 New York, NY 10170 212-687-6262 212-697-3043 (f) Worby, Groner & Edelman, LLP: 11 Martine Avenue White Plains, NY 10606 914-686-3700 914-686-8080 (f) bgroner@wgelaw.com

Case 1:21-mc 00100-Akt Document 3089 Filed 08/21/13 Page 37 of 125 Napoli Bern LLP

David E. Worby *
William H. Groner * f
Michael R. Edelman *

Richard S. Vecchio *
Michael L. Taub *
Howard G. Frederick *
John Raymond Mechmann, Jr. *

Charles N. Rock *
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Hon. Carl A. Vergari *
Harvey B. Ginsberg *
Paul J. Campson * f ‡

* Admitted In New York
f Admitted In New Jersey
f Admitted In Wisconsin
Admitted In Pennsylvania
£ Admitted In Florida
* Admitted In Oklahoma
† Admitted In District of Columbia

§ Of Counsel

A Partnership of Limited Liability Partnerships 115 Broadway New York, New York 10006 (877) 982-4376

www.wgenb.com

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Marc Jay Bern * †
Paul J. Napoli *
Jeffrey A. Guzman *
Steven Krentsel *

Melinda R. Alexis-Hayes *
Peter L. Benza *
W. Steven Berman f ¶
Nicole V. Gurkin *
Christopher R. LoPalo *
Thomas W. Raleigh * f
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Denise A. Rubin *
Jeremy Thurman ¥
Joy R. Simon *

Richard Corcoran § £ Mario D'Àngelo § * Brian Guillorn § * Noble McIntyre § ¥

TO:

ALL PLAINTIFFS' COUNSEL

FROM:

PAUL J. NAPOLI

DATE:

NOVEMBER 19, 2004

RE:

WORLD TRADE CENTER

Enclosed please find a letter from Judge Hellerstein, dated 11/17/04.

Wertheimer Associates, P.C.: 225 Broadway
New York, NY 10007
212-964-1860
212-349-2439 (f)
robinwertheimer@hotmail.com

Michael Zwal, Esq.
Daly, Bamundo, Zwal & Schermerhorn:
111 John Street, Suite 1100
New York, NY 10038
212-608-8840
212-608-8039 (f)
irs@dbzslaw.com

Friedman, Friedman, Chiaravalloti & Giannini: 2 Rector Street, 21st Floor New York, NY 10006 212-267-0380 212-962-1199 (f) sms@ff-law.com

Sacks & Sacks: 150 Broadway New York, NY 10038 212-964-5570 212-349-2141 (f) wtcmail@sacks-sacks.com

Jack Angelou, Esq. 2213 Jacqueline Avenue North Bellmore, NY 11710 516-721-1199

Oshman, Helfenstein & Mirisola: 90 William Street, Floor 6
New York, NY 10038
212-233-2100
212-964-8656 (f)
oshman@lawyer.com

Ryan Goldstein: 40 Exchange Place, Suite 1205 New York, NY 10005 212-422-1020 212-422-1069 (f) rgoldsteinlaw@aol.com

Palmeri, Gaven & Soberman: 55 John Street
New York, NY 10038
212-608-1717
212-732-0908 (f)
pglaw@palmeri-gaven.com

Sullivan, Papain, Block, McGrath & Cannavo: 120 Broadway
New York, NY 10271
212-732-9000
212-266-4141 (f)
pmarber@triallaw1.com

Willard R. Pratt III: 1708 Main Sylvan Beach, NY 13157 315-762-4711 315-829-4066 (f)

Rosenberg, Minc, Falkoff & Wolfe: 122 East 42nd Street Rm 4700 New York, NY 10168 212-697-9280 212-697-9284 (f) rwolff@rmfwlaw.com

Barton, Barton & Plotkin, LLP: 420 Lexington Avenue Rm 1918 New York, NY 10170 212-687-6262 212-697-3043 (f) Worby, Groner & Edelman, LLP: 11 Martine Avenue White Plains, NY 10606 914-686-3700 914-686-8080 (f) bgroner@wgelaw.com

Elliot Schaktman, Esq. Brecher Fishman Pasternack Popish Heller Rubin & Reiff 222 Broadway New York, NY 10038 212-341-7922 212-267-8235 (f)

Mark J Weber, Esq. Mound Cotton Wollan & Greengrass One Battery Park Plaza New York, NY 10004-1486

Ph.: 212 804-4296 Fax: 212 344-8066

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)	
\$)	SS.:
COUNTY OF NEW YORK)	

Betsy Barranco, being duly sworn, deposes and says that:

I am not a party to this action; I am over the age of 18 years and I reside in Richmond County, New York.

That on the 19th day of November, 2004, deponent served the within Letter from Judge Hellerstein dated November 17, 2004, upon the following, as listed below, at the address below for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

TO: Wertheimer Associates, P.C.: 225 Broadway
New York, NY 10007

Michael Zwal, Esq.
Daly, Bamundo, Zwal & Schermerhorn:
111 John Street, Suite 1100
New York, NY 10038

Friedman, Friedman, Chiaravalloti & Giannini: 2 Rector Street, 21st Floor New York, NY 10006

Sacks & Sacks: 150 Broadway New York, NY 10038

Jack Angelou, Esq. 2213 Jacqueline Avenue North Bellmore, NY 11710 Oshman, Helfenstein & Mirisola: 90 William Street, Floor 6 New York, NY 10038

Ryan Goldstein: 40 Exchange Place, Suite 1205 New York, NY 10005

Palmeri, Gaven & Soberman: 55 John Street New York, NY 10038

Sullivan, Papain, Block, McGrath & Cannavo: 120 Broadway
New York, NY 10271

Willard R. Pratt III: 1708 Main Sylvan Beach, NY 13157

Rosenberg, Minc, Falkoff & Wolfe: 122 East 42nd Street Rm 4700 New York, NY 10168

Barton, Barton & Plotkin, LLP: 420 Lexington Avenue Rm 1918 New York, NY 10170

Worby, Groner & Edelman, LLP: 11 Martine Avenue White Plains, NY 10606

Elliot Schaktman, Esq. Brecher Fishman Pasternack Popish Heller Rubin & Reiff 222 Broadway New York, NY 10038 Mark J Weber, Esq. Mound Cotton Wollan & Greengrass One Battery Park Plaza New York, NY 10004-1486

Betsy Barranco

Sworn to before me this 19th day of November 2004.

Notary Public

Josephine Zephrine
Notary Public, State of New York
No. 01ZE6045005
Qualified in Nassau County
Commission Explore Light 17, 200

David E. Worby *
William H. Groner * /
Michael R. Edolskin *

Richard Vocchio *
Michael L. Taub *
Howard G. Frederick *
John Raymond Mecha ann, Jr. *

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Hon, Carl A. Vergari *
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* Admitted In New York
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† Admitted In Pentsylvan a
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TAha 27137 RW Mare Jay Bern * †
Paul J. Napoli *
Jeffrey A. Quaman *
Steven Krentsel *

Melinda R. Alexis-Hayes **
Peter L. Benza **
W. Steven Berman f ¶
Nicole V. Gurkin **
Claristopher R. LoPalo **
Thomas W. Raleigh * f
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Richard Corograp § £ Mario D'Angelo § * Brian Guillora § * Noble Meintyre § ‡

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Date:

December 1, 2004

To

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Wertheimer Associates, PC	212-349-2439
Michael Zwal, Esq.	212-608-8039
Friedman, Friedman,	~x2-000-0037 v
Chiaravalloti & Giannini	212-962-1199
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Oshman, Helfenstein & Mirisola	212-964-8656
Ryan Goldstein, Esq.	212-422-1069
Palmeri, Gaven & Soberman	212-732-0908
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Willard Pratt, Esq.	315-829-4066
Rosenberg, Minc, Falkoff & Wolff	212-607-0294
Barton Barton & Plotkin	212-697-3043
Elliot Schaktman, Esq.	
Mark Weber, Esq.	212-267-8235
riamine arounds, mad.	212-344-8066

From:

Paul J. Napoli, Esq.

Re:

Judge Hellerstein's Order changing date for status conference

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* Admitted In New York Admitted in New Jersey
Admitted in Wisconsin
Admitted in Pentsylvania

£ Admitted in Florida

* Admitted in Oklahoms Admitted In District of Columbia

§ Of Counse

A Partnership of Limited Liability Partnerships

115 Broadway New York, New York 10006 (877) 982-4376

www.wgenb.com

Maro Jay Bern * † Paul J. Napoli * Joffrey A. Guzman * Stoven Krentaci *

Mclinda R. Alexis-Hayes * Peter L. Benza * W. Steven Berman / 1 Nicole V. Gurkin * Christopher R. LoPalo • Thomas W. Raleigh * / Ernost Reace * Denisc A. Rubin * Jeremy Thurman * Joy R. Simon *

Richard Corcoran § £ Mario D'Angelo § Brinn Guillorn & Noble McIntyre & *

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Date:

January 27, 2005

To:

Wertheimer Associates, PC 212-349-2439 Michael Zwal, Esq. 212-608-8039 Friedman, Friedman. Chiaravalloti & Giannini 212-962-1199~ Sacks & Sacks 212-349-2141 Oshman, Helfenstein & Mirisola 212-964-8656 Ryan Goldstein, Esq. 212-422-1069 Palmeri, Gaven & Soberman 212-732-0908 Sullivan Papain Block McGrath & Cannavo 212-266-4141 Willard Pratt, Esq. 315-829-4066 Rosenberg, Minc, Falkoff & Wolff 212-697-9284 Barton Barton & Plotkin 212-697-3043 Elliot Schaktman, Esq. 212-267-8235

From:

Paul J. Napoli, Esq.

Re:

Judge Hellerstein's Order deferring time to file cross-claims and

third-party claims

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* Admitted in New York

f Admitted in New Jersey Admitted in Wisconsin
Admitted in Pentrylvania E Admitted In Florida

4 Admitted In Oklahoma Admitted In District of Columbia § Of Counsel

A Partnership of Limited Liability Partnerships 115 Broadway New York, New York 10006 (877) 982-4376

www.wgenb.com

Marc Jay Bern * † Paul J. Napoli * Jeffrey A. Guzman * Steven Krentsel *

Melinda R. Aluxis-Hayes * Peter I. Hanza * W. Steven Berman / § Nicole V. Gurkin * Christopher R. LoPalo * Thomas W. Releigh * f Ernest Reece Denise A. Kubin * Jeremy Thurman ¥ Joy R. Simon *

Richard Corcoran § £ Mario D'Angolo § *
Brian Guillorn § * Noble McIntyre 8 ¥

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Date:

February 4, 2005

To:

Wertheimer Associates, PC 212-349-2439 Michael Zwal, Esq. 212-608-8039 Friedman, Friedman, 212-962-1199 Chiaravalloti & Giannini 212-349-2141 Sacks & Sacks 212-964-8656 V Oshman, Helfenstein & Mirisola Ryan Goldstein, Esq. 212-422-1069~ Palmeri, Gaven & Soberman 212-732-0908 Sullivan Papain Block 212-266-4141 McGrath & Cannavo

Willard Pratt, Esq. 315-829-4066 V Rosenberg, Minc, Falkoff & Wolff 212-697-9284 Barton Barton & Plotkin 212-697-3043

Elliot Schaktman, Esq.

212-267-8235

From:

Paul J. Napoli, Esq.

Re:

Judge Hellerstein's Order regulating filing of answers and third party

complaints

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Case 1:21-mc-00100-AKH Document 3089 Filed 08/21/13 Page 47 of 125 Worby Groner Edelman & Napoli Bern LLP

David E. Worby *
William H. Groner * 4
Michael R. Edelman *

997

Richard S. Vecchio *
Michael L. Taub *
Howard G. Frederick *
John Raymond Mechmann, Jr. *

Charles N. Rock *
Sam Rosmarin *
Hon. Carl A. Vergari *
Harvey B. Ginsberg *
Paul J. Campson * f ‡

* Admitted In New York

f Admitted In New Jersey

† Admitted In Wisconsin

SAdmitted In Pennsylvania

£ Admitted In Florida

* Admitted In Oklahoma

§ Of Counsel

‡ Admitted In District of Columbia

115 Broadway New York, New York 10006 (877) 982-4376

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www.wgenb.com

Marc Jay, Bern * † Paul J. Napoli * Jeffrey A. Guzman * Steven Krentsel *

**Relinda R. Alexis-Hayes **
Peter L. Benza *
W. Steven Berman f ¶
Nicole V. Gurkin *
Christopher R. LoPalò *
Thomas W. Râleigh * f
Ernest Reece *
Denise A. Rubin *
Jeremy Thurman ¥
Joy R. Simon *

Richard Corcoran § £ Mario D'Angelo § * Brian Guillorn § * Noble McIntyre § ¥

TO:

ALL PLAINTIFFS' COUNSEL

FROM:

PAUL J. NAPOLI

DATE:

FEBRUARY 9, 2005

RE:

WORLD TRADE CENTER

Enclosed please find Case Management Order No. 2 and Case Management Order No. 3 signed by Judge Hellerstein, dated 2/7/05.

Wertheimer Associates, P.C.: 225 Broadway
New York, NY 10007
212-964-1860
212-349-2439 (f)
robinwertheimer@hotmail.com

Michael Zwal, Esq.
Daly, Bamundo, Zwal & Schermerhorn:
111 John Street, Suite 1100
New York, NY 10038
212-608-8840
212-608-8039 (f)
jrs@dbzslaw.com

Friedman, Friedman, Chiaravalloti & Giannini: 2 Rector Street, 21st Floor
New York, NY 10006
212-267-0380
212-962-1199 (f)
sms@ff-law.com

Sacks & Sacks: 150 Broadway New York, NY 10038 212-964-5570 212-349-2141 (f) wtcmail@sacks-sacks.com

Jack Angelou, Esq. 2213 Jacqueline Avenue North Bellmore, NY 11710 516-721-1199

Oshman, Helfenstein & Mirisola: 90 William Street, Floor 6
New York, NY 10038
212-233-2100
212-964-8656 (f)
oshman@lawyer.com

Ryan Goldstein: 40 Exchange Pface, Suite 1205 New York, NY 10005 212-422-1020 212-422-1069 (f) rgoldsteinlaw@aol.com

Palmeri, Gaven & Soberman: 55 John Street
New York, NY 10038
212-608-1717
212-732-0908 (f)
pglaw@palmeri-gaven.com

Sullivan, Papain, Block, McGrath & Cannavo: 120 Broadway
New York, NY 10271
212-732-9000
212-266-4141 (f)
pmarber@triallaw1.com

Willard R. Pratt III: 1708 Main Sylvan Beach, NY 13157 315-762-4711 315-829-4066 (f)

Rosenberg, Minc, Falkoff & Wolfe: 122 East 42nd Street Rm 4700 New York, NY 10168 212-697-9280 212-697-9284 (f) rwolff@rmfwlaw.com

Barton, Barton & Plotkin, LLP: 420 Lexington Avenue Rm 1918 New York, NY 10170 212-687-6262 212-697-3043 (f) Worby, Groner & Edelman, LLP: 11 Martine Avenue White Plains, NY 10606 914-686-3700 914-686-8080 (f) bgroner@wgelaw.com

Elliot Schaktman, Esq: Brecher Fishman Pasternack Popish Heller Rubin & Reiff 222 Broadway New York, NY 10038 212-341-7922 212-267-8235 (f)

Andrew Bell, Esq. 110 East 55th Street New York, New York 10022 (212) 838-3333 (212) 838-3755 (facsimile) abell@lockslaw.com

David E. Worby * William H. Groner * Michael R. Edelman *

Richard S. Vecchio * Michael L. Taub * Howard G. Frederick * John Raymond Mechmann, Jr. *

Charles N. Rock * Sam Rosmarin * Hon. Carl A. Vergari * Harvey B. Ginsberg * Paul J. Campson * f:

Admitted In New York

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New York, New York 10006 (877) 982-4376

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Marc Jay Bern * † Paul J. Napoli * Jeffrey A. Guzman * Sleven Krentsel *

Melinda R. Alexis-Hayes * Peter L. Benza W. Steven Berman / T Nicole V. Gurkin * Christopher R. LoPalo * Thomas W. Raleigh * f Emest Reece * Denise A. Rubin * Jeremy Thurman ¥ Joy R. Simon *

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Date:

February 25, 2005

To:

Wertheimer Associates, PC 212-349-2439 Michael Zwal, Esq. 212-608-8039 Friedman, Friedman, Chiaravalloti & Giannini 212-962-1199 Sacks & Sacks 212-349-2141 Oshman, Helfenstein & Mirisola 212-964-8656 Ryan Goldstein, Esq. 212-422-1069 Palmeri, Gaven & Soberman 212-732-0908 🗸 Sullivan Papain Block McGrath & Cannavo 212-266-4141 Willard Pratt, Esq. 315-829-4066 Rosenberg, Minc, Falkoff & Wolff 212-697-9284 Barton Barton & Plotkin 212-697-3043 Elliot Schaktman, Esq. 212-267-8235

From:

Paul J. Napoli, Esq.

Re:

Judge Hellerstein's Order

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- Admitted In New York f Admitted in New Jersey
† Admitted in Wisconsin
¶ Admitted in Pennsylvania E Admitted in Florida ¥ Admeted In Okkhom Admitted In District of Cohimbin & Cf Counsel

A Partnership of Limited Liability Partnerships 115 Broadway New York, New York 10006 (877) 982-4376

www.wgenb.com

Marc Jay Bern * † Paul J. Napoli * Jeffrey A. Guzman Slaven Krentsel *

Melinda R. Alexis-Hayes * Peter L. Renza W. Steven Borman / ¶ Nicole V. Gurkin * Christopher R. LoPalo * Thomas W. Raleigh * / Emost Reced 1 Denise A, Rubin * Jeremy Thurman ¥ Joy R, Slmon *

Richard Corsoran § £ Mario D'Angelo § Brian Gulllorn & Noble Mointyre § ¥

FACSIMILE COVER SHEET

Date:

March 23, 2005

To:

212-349-2439 Wertheimer Associates, PC 212-608-8039 Michael Zwal, Esq. Friedman, Friedman, 212-962-1199 Chiaravalloti & Giannini 212-349-2141 Sacks & Sacks Oshman, Helfenstein & Mirisola 212-964-8656/ 212-422-1069-/ Ryan Goldstein, Esq. Palmeri, Gaven & Soberman 212-732-0908 [∨] Sullivan Papain Block McGrath & Cannavo 212-266-4141[√] Willard Pratt, Esq. **315-829-4066**-√ Rosenberg, Minc, Falkoff & Wolff 212-697-9284 Barton Barton & Plotkin 212-697-3043 Elliot Schaktman, Esq. 212-267-8235

From:

Paul J. Napoli, Esq.

Re:

Judge Hellerstein's Order Regulating the Sending of Correspondence

to Chambers

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Richard S. Vecchio *
Michael L. Taub *
Howard G. Frederick *
John Raymond Mechmann, Jr. *

Charles N. Rock *
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Hon. Carl A. Vergari *
Haswey B. Ginsberg *
Paul J. Campson * f ‡

* Admitted In New York
f Admitted In New Jersey
f Admitted In Wisconsin
Admitted In Pennsylvania
£ Admitted In Florida
Admitted In Oklahoma
Admitted In District of Columbia

§ Of Counsel

A Partnership of Limited Liability Partnerships

115 Broadway New York, New York 10006 (877) 982-4376

www.wgenb.com

Marc Jay Bern * †
Paul J. Napoli *
Jeffrey A. Guzman *
Steven Krentsel *

Chad Ayoub*
Peter L. Benza *
W. Steven Berman f ¶
William Dubanevich*
Nicole V. Gurkin *
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Thomas W. Raleigh * f
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Heather Wasserman*

April 6, 2005

James J. Tyrrell Jr., Esq. Latham & Watkins, LLP One Newark Center, 16th Fl. Newark, New Jersey 07101-3174

APR - 8 2005

Richard Williamson, Esq. Flemming, Zulack & Williamson, LLP One Liberty Plaza New York, NY 10006-1404

Re:

In re: World Trade Center Disaster Site Litigation

21 MC 100 (AKH)

Dear Counsel:

Pursuant to Case Management Order No. 3 dated February 7, 2005, plaintiffs hereby serve on each of your offices the enclosed:

- 1. Plaintiffs' Responsive Declaration of Facts (Part 1 of 2);
- 2. Plaintiffs' Responsive Declaration of Law (Part 2 of 2);
- Plaintiffs' Responsive Chronology.

Each is being electronically filed with the Court's ECF system and electronically served via e-mail on your offices. The documents will be mailed via first class mail to all persons on the service list annexed, and a courtesy copy will also be e-mailed to Judge Hellerstein.

Please do not hesitate to call me if you have any question or comment.

Very truly yours,

Denise A. Rubin (DR 5591)

Service List for In re: World Trade Center Disaster Site Litigation - 21 MC 100 (AHK)

Andrew J. Carboy
Sullivan Papain, Block, McGrath & Cannavo, P.C.
120 Broadway
New York, New York 10271
acarboy@triallaw1.com

James J. Tyrrell Jr., Esq.
Joseph Hopkins, Esq.
Latham & Watkins, LLP
One Newark Center, 16th Fl.
Newark, New Jersey 07101-3174
jtyrrell@lw.com
jhopkins@lw.com

Alan E. Kraus, Esq.
Shane H. Freedman, Esq.
Latham & Watkins, LLP
One Newark Center, 16th Fl.
Newark, New Jersey 07101-3174
akraus@lw.com
sfreedman@lw.com

Gary P. Shaffer
Corporation Counsel of the City of New York
100 Church Street
New York, New York 10007-2601
gshaffer@law.nyc.gov

Richard Williamson Flemming, Zulack & Williamson, LLP One Liberty Plaza New York, NY 10006-1404 rwilliamson@fzw.com

Mark J. Weber, Esq.
Mound Cotton Wollan & Greengrass
One Battery Park Plaza
New York, New York 10004
mweber@moundcotton.com

John E. Sparling, Esq. London Fischer, LLP 59 Maiden Lane, 41st Floor New York, New York 10038 jsparling@londonfischer.com

Richard Babinecz, Esq. Consolidated Edison Co. 4 Irving Place New York, New York 10003

Mark Sokoloff, Esq. Brecher, Fishman, et al. 222 Broadway New York, New York 10038

Gregory Cannata, Esq. 233 Broadway New York, New York 10279

Sacks & Sacks 150 Broadway New York, New York 10038

Wertheimer Associates, P.C. 225 Broadway
New York, New York 10007

Rosenberg Minc Falkoff & Wolff, LLP 122 East 42nd Street, Rm. 4700 New York, New York 10168

Willard R. Pratt, III, Esq. 1708 Main Sylvan Beach, New York 13157

Palmeri Gaven & Soberman 55 John Street New York, New York 10038

Oshman Helfenstein & Mirasola, LLP 90 William Street, Floor 6 New York, New York 10038 Michael Zwal, Esq.
Daly, Bamundo, Dalton & Schermerhorn
111 John Street, Suite 1100
New York, New York 10038

Friedman Friedman Chiaravolloti & Giannini 2 Rector Street, 21st Floor New York, New York 10006

Law Office of Ryan Goldstein, PLLC 40 Exchange Place, Suite 1205 New York, New York 10005

Andrew P. Bell, Esq. 110 East 55th Street New York, New York 10022

Barton, Barton & Plotkin, LLP 420 Lexington Avenue, Room 1918 New York, New York 10170

Jack Angelou, Esq. 2213 Jacqueline Avenue North Bellmore, New York 11710

Case 1:21-mc 00100-AKH Document 3089 Filed 08/21/13 Page 57 of 125 Page 57 of 125

David E. Worby *
William H. Groner * f
Michael R. Edelman *
Richard S. Vecchio *
Michael L. Taub *

Michael L. Taub *
Howard G. Frederick *
John Raymond Mechmann, Jr. *

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Nicole V. Gurkin *
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TO:

ALL PLAINTIFFS' COUNSEL

FROM:

PAUL J. NAPOLI

DATE:

MAY 16, 2005

RE:

٢.

WORLD TRADE CENTER

Enclosed please find Case Management Order No. 4.

Wertheimer Associates, P.C.: 225 Broadway New York, NY 10007 212-964-1860 212-349-2439 (f) robinwertheimer@hotmail.com

Michael Zwal, Esq. Daly, Bamundo, Zwal & Schermerhorn: 111 John Street, Suite 1100 New York, NY 10038 212-608-8840 212-608-8039 (f) jrs(a)dbzslaw.com

Friedman, Friedman, Chiaravalloti & Giannini: 2 Rector Street, 21st Floor

New York, NY 10006

212-267-0380

212-962-1199 (f)

sms@ff-law.com

Sacks & Sacks: 150 Broadway New York, NY 10038 212-964-5570

212-349-2141 (f)

wtcmail@sacks-sacks.com

Jack Angelou, Esq. 2213 Jacqueline Avenue North Bellmore, NY 11710 516-721-1199

Oshman, Helfenstein & Mirisola: 90 William Street, Floor 6 New York, NY 10038 212-233-2100 212-964-8656 (f) oshman@lawyer.com

Ryan Goldstein: 40 Exchange Place, Suite 1205 New York, NY 10005 212-422-1020 212-422-1069 (f) rgoldsteinlaw@ao1.com

Palmeri, Gaven & Soberman: 55 John Street New York, NY 10038 212-608-1717 212-732-0908 (f)

pglaw@palmeri-gaven.com

Sullivan, Papain, Block, McGrath & Cannavo: 120 Broadway

New York, NY 10271 212-732-9000

212-266-4141 (f)

pmarber@triallaw1.com

Willard R. Pratt III: 1708 Main Sylvan Beach, NY 13157 315-762-4711 315-829-4066 (f)

Rosenberg, Minc, Falkoff & Wolfe: 122 East 42nd Street Rm 4700 New York, NY 10168 212-697-9280 212-697-9284 (f) rwolff@rmfwlaw.com

Barton, Barton & Plotkin, LLP: 420 Lexington Avenue Rm 1918 New York, NY 10170 212-687-6262 212-697-3043 (f) Worby, Groner & Edelman, LLP: 11 Martine Avenue White Plains, NY 10606 914-686-3700 914-686-8080 (f) bgroner@wgelaw.com

Elliot Schaktman, Esq.
Brecher Fishman Pasternack
Popish Heller Rubin & Reiff
222 Broadway
New York, NY 10038
212-341-7922
212-267-8235 (f)

Andrew Bell, Esq. 110 East 55th Street New York, New York 10022 (212) 838-3333 (212) 838-3755 (facsimile) abell@lockslaw.com

David B. Worby * William H. Groner * / Michael R. Edelman *

Richard S. Vecchio *
Michael L. Taub * Howard G. Frederick * John Raymond Mechmann, Jr. *

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From:

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Peter L. Benza *
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From:

Paul J. Napoli, Esq.

Re:

Order Regulating Limited Discovery

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From:

Paul J. Napoli, Esq.

Gregory Cannata, Esq.

Re:

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From:

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Re:

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Wertheimer Associates, PC **212-349-2439** ✓ Michael Zwal, Esq. 212-608-8039~ Friedman, Friedman, Chiaravalloti & Giannini **212-962-1199** ✓ Sacks & Sacks 212-349-2141 Oshman, Helfenstein & Mirisola 212-964-8656 Ryan Goldstein, Esq. 212-422-1069 Palmeri, Gaven & Soberman 212-732-0908 Sullivan Papain Block McGrath & Cannavo 212-266-4141 Willard Pratt, Esq. 315-829-4066-Rosenberg, Minc, Falkoff & Wolff 212-697-9284 Mark Sokoloff, Esq. 212-267-8235 Gregory Cannata, Esq. 212-227-4141 Ed Markowitz, Esq. 212-385-7845

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Melinda R. Alexis-Hayes
Peter L. Benza *
W. Steven Berman f ¶
Nicole V. Gurkin *
Christopher R. LoPalo *
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Wertheimer Associates, PC 212-349-2439 Michael Zwal, Esq. 212-608-8039 Friedman, Friedman, Chiaravalloti & Giannini 212-962-1199/ Sacks & Sacks 212-349-2141 Oshman, Helfenstein & Mirisola 212-964-8656 Ryan Goldstein, Esq. 212-422-1069 Palmeri, Gaven & Soberman 212-732-0908V Sullivan Papain Block McGrath & Cannavo 212-266-4141 Willard Pratt, Esq. 315-829-4066 Rosenberg, Minc, Falkoff & Wolff 212-697-9284 Mark Sokoloff, Esq. 212-267-8235 Gregory Cannata, Esq. 212-227-4141 Ed Markowitz, Esq. 212-385-7845

From:

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Marc Jay Bern * †
Paul J. Napoli *
Jeffrey A. Guzman *
Steven Krentsel *

Melinda R. Alexis-Hayes *
Peter L. Benza *
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Date:

August 9, 2005

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1 .6

From:

Paul J. Napoli, Esq.

Re:

Ground Zero - Case Management Order

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Melinda R. Alexis-Hayes * Peter I. Henza •
W. Steven Berman f 1 Nicole V. Gurkin Christopher R. LoPalo . Thomas W. Raleigh # f Firnest Reco Denise A. Rubin *
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Date:

August 19, 2005

To:

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From:

Paul J. Napoli, Esq.

Re:

Ground Zero - Order Directing Discovery from Federal Government

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September 27, 2005

James E. Tyrrell Jr. Esq. Latham & Watkins, LLP One Newark Center, 16th Fl. Newark, New Jersey 07101-3174

> In re: World Trade Center Disaster Site Litigation Re:

> > 21 MC 100 (AKH)

Your letter of September 20, 2005

Dear Mr. Tyrrell:

Receipt of yours of September 20, 2005 is acknowledged. Your letter states that the group of documents highlighted in your letter were "inadvertently disclosed" and contained attorney-client privileged communications and information

We have pulled and reviewed the documents in question, and must respectfully disagree with your characterization. The documents are plainly not attorney-client communications, as they represent, for the most part, inter-agency and intra-agency communications regarding the application of New York City and New York State Health and Environmental laws and regulations, the extent to which they are or are not pre-empted by federal laws and federal agency regulations (e.g., OSHA), and the consideration of appropriate sanctions for individual workers' failure to comply with same while working at the World Trade Center site and its environs.

We are particularly surprised by your characterization of the document identified as "CITYCM300041293 through CITYCM300041305" as attorney-client or otherwise privileged. That document is Governor Pataki's Executive Order 113.29 dated October 9, 2001, which continues the Executive Order No. 113 dated September 11, 2001. It is a public record and nothing in its substantive content provides a basis for a claim of privilege.

Thus, we will not concede that the documents you addressed in the letter, which were disclosed without limitation and to which no objection was lodged at the depositions of Michael Levy and Mary Plaskon, are in any way privileged. Nor will we return the documents or forbear in relying on same.

James E. Tyrrell, Esq.

In re: World Trade Center Disaster Site Litigation

September 27, 2005, page 2

The attorney client privilege applies only if the asserted holder of the privilege is or is about to become a client, the person to whom the communication was made is a member of a bar of court or such person's subordinate, and is acting as a lawyer in connection with the communication. The communication must relate to the fact of which the attorney was informed by the client, must be made without the presence of third persons, and made for the purpose of securing primarily an opinion on the law or legal services or assistance in some legal proceeding... and the privilege has been claimed and not waived by the client. Bank Brussels Lambert v. Credit Lyonnais (Suisse) A.A., 160 F.R.D. 437 (SDNY 1995). The cloak of the attorney client privilege does not shield the underlying information or the substance contained in the communication. Henry v. Champlain Enterprises, Inc., 212 F.R.D. 73 (NDNY 2003).

Documents and files that are or report confidential communications between an attorney and client are privileged. Colton v. U.S., 306 F.2d 633 (2d Cir. 1962), cert. denied 371 U.S. 951. But a document that is not privileged while held in the hands of a client does not become privileged merely because it is handed to his counsel. Falsone v. U.S., 205 F.2d 734 (5th Cir. 1953) cert. denied 346 U.S. 864. Thus, preexisting documents such as the inter-agency communications at issue in your September 20, 2005 letter, that were not prepared by clients for the purpose of communicating with their attorneys in confidence, have no special protection under the attorney-client privilege solely because they were subsequently turned over to a lawyer. Colton, 306 F.2d at 639. Thus, in a case where attorney client privilege was claimed as to documents an attorney utilized in preparing the client's tax returns, the Court held that "the papers utilized by Attorney Manning were to aid in preparing the tax return, not primarily to help litigate over those returns, the documents are not privileged." U.S. v. Schenectady Sav. Bank, 525 F. Supp. 647, 651 (N.D.N.Y., 1981).

For all of the foregoing reasons, we cannot accede to your request to return the documents listed in your September 20, 2005 letter, nor will we agree to consider them privileged.

More to the point, however, your letter highlights what we believe is the greater underlying issue, that of the defendants' compliance with the discovery ordered by the Court throughout this initial discovery phase. Your attempt to shield these documents indicates the likelihood, as plaintiffs have suspected, that other documents not properly deemed privileged are being improperly withheld by the defendants and their counsel. We have yet to see a privilege log as to documents withheld, and demand such a privilege log by this letter.

Very truly yours,

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

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Steven Krentsel *

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PAUL J. NAPOLI SENIOR PARTNER PNAPOLI@NAPOLIBERN.COM

March 15, 2007

Rosenberg & Minc 122 East 42nd St., Suite 3800 New York, NY 10168

Re: Status of World Trade Center Disaster Site Litigation

Dear Counsel:

We write to provide you a report on the status of the ongoing World Trade Center Disaster Site Litigation pending on several fronts, including the Supreme Court of the State of New York, County of New York, and in the federal courts, *i.e.*, the Southern District of New York and in the United States Court of Appeals for the Second Circuit.

Thus far, we are happy to report that we have been successful in many of our endeavors on your clients' behalf. In light of some of the legal precedent we have established, moreover, you should keep in mind that there is still time to file claims for clients who worked at and around the World Trade Center Sites, including not only "ground zero," but the barges and transfer stations, the office cleaning efforts surrounding the Trade Center site in lower Manhattan, and the Fresh Kills Landfill in Staten Island.

SUPREME COURT OF THE STATE OF NEW YORK

If you have been following the news in the New York Law Journal, you may have seen three decisions by Justice Michael Stallman, the Supreme Court Justice to whom the WTC cases have been assigned in New York County. See, e.g., Southern District 9/11-Related Claims Allowed to Go Forward; Too Early to Decide Entitlement to Immunity, NEW YORK LAW JOURNAL October 23, 2006, p. 27, col. 3; Notice Requirement Waived in 200-Plus 9/11-Related Suits, NEW YORK LAW JOURNAL, August 8, 2006, p.1.

In Galasso v. The City of New York, 8 Misc.3d 1025(a), 2005 WL 1936001 (Sup. Ct., N.Y. Cty., 2005), the first of the three decisions, Justice Stallman first addressed the question raised by the City of New York as to whether a petition for the court's leave to file a late notice of claim against the City of New York pursuant to General Municipal Law §50-e had to be supported by the petitioner's own affidavit, an affidavit of the petitioner's physician, or the petitioner's certified medical records. The City argued that an attorney's affirmation in support of the application was insufficient basis for the Court to determine whether the underlying claim

had merit, as the attorney did not have personal knowledge of the facts alleged. Justice Stallman also disagreed with the City's contention that the Statute of Limitations on Ground Zero claims ran from the date of exposure:

CPLR 214-c provides that in personal injury and property damage cases based on exposure to a foreign substance, the statute of limitation period begins to run not from the exposure itself but from the later time when the plaintiff discovers or with reasonable diligence should have discovered the injury.

Galasso v. The City of New York, 2005 WL 1936001 at *2. Based on those findings, Justice Stallman held that issues of when the petitioner was exposed and when he knew or reasonably should have known of his illness were matters not properly considered on a petition for leave to file a late notice of claim. Rather, the Court held that the statute of limitations matters should be presented to the trial court, i.e., the Southern District of New York, upon the completion of discovery, and that the matter could present factual issues requiring resolution by a fact finder at trial.

In the next significant decision, Justice Stallman decided the first 13 of a group of more than 250 petitions for leave to file late notices of claim following the Second Circuit Court of Appeals' holding in McNally v. Port Authority [In re: World Trade Center Disaster Site Litigation] 414 F.3d 352 (2d Cir. 2005), in which the Second Circuit held that jurisdiction for all ground zero matters belonged before the United States District Court for the Southern District of New York. In Abdelreheim v. City of New York, 12 Misc.3d 1191(A) 2006 WL 2193044 (Sup. Ct., N.Y. 2006), Justice Stallman noted that the City of New York "had actual notice of the essential facts constituting petitioners' claim of exposure to toxic substances... the City also has not shown any prejudice." Abdelreheim, 2006 WL 2193044 at *1. The Court also noted once more that "[c]ontrary to the City's argument, an affidavit from petitioners or from a physician attesting to the injuries is not required in [these cases]." Id. Justice Stallman also refused to consider the City's arguments on immunity or statute of limitations grounds, holding that:

In light of the decision of the United States Court of Appeals for the Second Circuit in McNally v. Port Auth. [In re: WTC Disaster Site], (414 F3d 352 [2d Cir2005]), it would be presumptuous for this Court to pass on the City's argument that petitioners' claims are patently meritless due to immunity or are otherwise time-barred. In McNally, the Second Circuit held that the federal cause of action created by Section 408(b) the Air Transportation Safety and System Stabilization Act of 2001 (ATSSSA) (49 USC § 40101) is the exclusive remedy for "claims of respiratory injuries by workers in sifting, removing, transporting, or disposing of [World Trade Center] debris." 414 F3d at 377. Section 408(b)(3) provides that the federal District Court in the Southern District of New York shall have exclusive jurisdiction over ATSSSA claims.

Thus, this Court lacks subject matter jurisdiction to decide whether petitioners' claims, which are governed by the ATSSSA, are

> patently meritless. It is not for this Court to determine which limitations period applies, or whether the instant claims are barred by the immunity asserted by the City.

Abdelreheim, 2006 WL 2193044 at *1-2.

Finally, in the most comprehensive of the three decisions, Justice Stallman addressed the foregoing issues of proof and also the question of whether petitions filed in the form of Orders to Show Cause were timely if filed with the Court's ex parte clerk on the last day of the one-year and ninety day period permitted under GML 50-e(i). See Antine v. City of New York, 14 Misc.3d 161, 2006 WL 2883381 (Sup. Ct., N.Y. Cty., 2006). In a fairly momentous decision, the Court also held that:

It should no longer be assumed that the one year and 90 day limitations period of General Municipal Law § 50-i applies to petitioners' claims. In McNally v. Port Auth. (In re: WTC Disaster Site), 414 F.3d 352, supra, the United States Court of Appeals for the Second Circuit held that Section 408(b) of the ATSSSA is the exclusive remedy for "claims of respiratory injuries by workers in sifting, removing, transporting, or disposing of [World Trade Center] debris." 414 F.3d at 377. On its face, Section 408 of the ATSSSA does not set forth a specific limitations period for the federal cause of action. Federal law provides that, "[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after [December 1, 1990] may not be commenced later than 4 years after the cause of action accrues." 28 USC § 1658(a); see Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 124 S.Ct. 1836, 158 L.Ed.2d 645 (2004). Thus, in light of McNally, an issue arises as to whether the limitations period should be four years, not one year and 90 days.

Antine v. City of New York, 2006 WL 2883381 at *2.

Most recently, the City served our office with Notices to take up to sixty (60) 50-h hearings of our clients per day, apparently in the hope that we would not be able to fully staff so many hearings and thus default. Meeting their bluff, we arranged coverage with sufficient numbers of attorneys whom we trained carefully to anticipate the City's and its outside counsel's questions. The City and its counsel, Patton Boggs, LLP, were unable to meet their own staffing obligations, and when we responded that we were confirming the multiple hearings on the first day of the notices served, it was the City's law department that was caught unable to staff its own noticed hearings. We are happy to report that we met, and we continue to meet, our staffing obligations and have attended and defended up to forty hearings daily for several weeks.

APPELLATE DIVISION: FIRST DEPARTMENT

Following the release by Justice Stallman of some 250-plus decisions in the late notice of claim matters, the City of New York served 254 Notices of Appeal for the First Department. The Appellate Division appointed a Special Master to oversee a plan for consolidation, and after some negotiation, we agreed that the City would perfect one typical appeal and that the First Department's decision on that matter, *Felder v. City of New York*, would apply to the remaining 250-plus matters on appeal. The City advised that it would limit the issues on appeal to the question of what supporting documentation is necessary on a petition for leave to file a late notice of claim, leaving the statute of limitations matters for another appeal.

In fact, when the City's brief was filed, we were surprised to find that it was only nine pages long and cited only four cases in support. Notwithstanding the prior stipulation and negotiations, the City's brief addressed primarily the issue of whether Justice Stallman had abused his discretion in denying the City's motions to dismiss the late notice of claim petition on Statute of Limitations Grounds, and only briefly touched on the question of what documentation was required for a petition to file a late notice of claim. In this, the City argued as they had before Justice Stallman that the petition was defective without a sworn affidavit by the petitioner, his physician and medical records. Our rather more lengthy and extensively-researched Respondents' Brief was filed on March 1, 2007. As the Court has *sua sponte* moved the appeal from the April to the May term of the Court, the City's Reply Brief is now due on March 30, 2007. Although the City has filed a request to argue the matter orally, the Court has already advised that they will not hear oral argument. The City filed a second request urging argument be heard, but at this time, we do not anticipate that the Court will hear oral argument.

PENDING MATTERS IN THE FEDERAL COURTS

Pursuant to Judge Hellerstein's Case Management Order ("CMO") 3, the parties engaged in almost two years of depositions and document exchange solely on the issue of governmental control over the World Trade Center site and the question of what, if any, safety systems were put in place for the workers' protection. Upon the completion of the focused but nonetheless extensive disclosure permitted under CMO 3, the City of New York, the Port Authority of New York and New Jersey ("PA") and the City's primary contractors filed their motions for dismissal and summary judgment on their claims that the governmental entities and their agents were immune from suit pursuant to both federal and state statute. These motions had been preceded by lengthy and extensively documented "Offers of Proof" by plaintiffs and defendants. The Court hoped to better narrow the parties' claims prior to the preparation of dismissal motions on immunity grounds, but the Offers of Proof proved nothing else so much as that the issues and proof on these matters were far to broad to be resolved — if at all — without formal briefing and argument.

That briefing was completed in the spring of 2006, and Judge Hellerstein heard two full days of oral argument by the parties in June. On October 17, 2006, the Court released its 99-

page long decision denying the defendants' motions for dismissal. See In re: World Trade Center Disaster Site Litigation, 456 F. Supp. 2d 520 (SDNY 2006).

Defendants moved to dismiss plaintiffs' claims, contending that they are immune from suit pursuant to state (State Defense Emergency Act) and federal laws (Stafford Act) providing immunity for actions undertaken in response to a disaster created by an enemy attack on the state and nation. In response, we argued, inter alia, that Defendants are not immune, particularly in light of Congress' clear contemplation, in the Air Transportation Safety and System Stabilization Act of 2001, that the City was exposed to numerous claims resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001. We also argued that Congress recognized the City's exposure to suits by granting a one billion dollar fund to the City to pay for the City's losses, liabilities and expenses, enabling the City to create a captive insurance fund to insure its exposure. In re World Trade Center Disaster Site Litigation 456 F.Supp.2d at 523.

Notwithstanding the defendants' arguments that it was OSHA, not the City and its contractors, who were responsible to monitor and enforce personal protective equipment standards at the Trade Center site, the Court agreed that it was the City and its contractors who were in charge: "Clearly, problems with enforcing PPE requirements persisted and not OSHA, but the DDC and the private Contractors, were responsible to ensure that compliance at the site would be enforced." *In re World Trade Center Disaster Site Litigation* 456 F.Supp.2d at 535. The Court also recognized that "throughout the duration of the rescue and recovery effort, the City agencies and Primary Contractors remained obligated to abide by applicable safety standards and labor laws." *In re WTC*, 456 F.Supp.2d at 537. Similarly, the Court recognized that, although the State and City Governments

had the capacity to suspend, or direct the suspension of, "any of its local laws, ordinances or regulations, or parts thereof subject to federal and state constitutional, statutory and regulatory limitations, which may prevent, hinder, or delay necessary action in coping with a disaster or recovery therefrom[.]" ... Both declined, however, to authorize wholesale suspension of applicable laws and regulations, instead authorizing only the suspension of the sign-in/sign-out procedures required by New York State Labor Law for the period from September 11, 2001 to October 14, 2001.

In re WTC, 456 F.Supp.2d at 537.

The Court also recognized the unique situation posed by the amendment of the ATSSSA to provide for assurance to the City against liability, loss or expense:

I have not come across federal legislation of the type we have hereproviding a limit to how much aggregate liability the City can incur-except in bankruptcy or insolvency practice, and there is no suggestion of that here. Nor, except perhaps in the case of atomic energy disasters, have I encountered a contribution from the federal fisc to create a litigation defense fund, and even in that case there is a significant difference. Here, the City was given one

billion dollars to assure against liability, loss or expense, while in the case of atomic energy disaster, there is a provision only of federal insurance. 42 U.S.C. § 2210 (2005).

In re WTC, 456 F.Supp.2d at 546. In the words of the Court: "What, one may ask, was the City, and Congress, contemplating if not the kinds of suits as those over which I preside? Clearly, provisions of insurance do not concede liability, as Defendants stress, but never have we seen provisions as those we have here." Id. At 546.

Ultimately, the Court held that:

- (1) ATSSSA did not preempt otherwise applicable defenses:
- (2) New York State and Local Natural Disaster and Man-Made Disaster Preparedness Law (Disaster Act) did not preempt New York State Defense Emergency Act (SDEA);
- (3) extent to which defendants had immunity under SDEA could not be determined on present state of record;
- (4) record was insufficient to determine degree to which defendants were entitled to common law immunity;
- (5) fact issues precluded summary judgment that contractors had derivative immunity;
- (6) there was no immunity under federal Stafford Act:
- (7) there was no negligence liability on part of managing agent or utility having facilities under Center; and
- (8) there was no negligence liability on part of lessees.

At the same time of the Court's decision on the dismissal motions, the Court also requested the parties' thoughts on the appointment of special masters to monitor discovery matters going forward. After consideration of the objections lodged by counsel for the parties, by order dated December 12, 2006, the Court appointed two special masters, Dean Aaron J. Twerski of Hofstra University School of Law and Professor James Henderson of Cornell Law School.

Before post-motion discovery could begin, however, the defendants had noted their appeals to the Second Circuit from Judge Hellerstein's October 17, 2006 Order and Decision on the dismissal motions. Judge Hellerstein denied the defendants' motion for leave to take an interlocutory appeal and held that the District Court had not been divested of jurisdiction as defendants urged. Upon defendants' application to the Second Circuit for a Writ of Mandamus and Leave to take their interlocutory appeal, the Second Circuit granted a temporary stay of the proceedings in the District Court pending full briefing and consideration of the motion. In response, we filed a motion to dismiss the appeal as an improper interlocutory appeal. After briefing, oral argument was heard by the Second Circuit on the plaintiffs' motion to dismiss on March 6, 2007. We have not had any decision from the Court at this point, and the temporary

Rosenberg & Minc

Re: Status Update on World Trade Center Litigation

March 12, 2007, page 7

stay remains in effect pending the Court's determination of the motions (by the defendants) for stay and (by the plaintiffs for) dismissal of the appeal, as well as the application for Mandamus.

Finally, although the District Court is stayed on the World Trade Center Site litigations, a recent conference was held in the Office Cleaner litigations (21 MC 102), where no stay is in effect. Discovery and pleadings matters are proceeding there.

Most recently, on Friday March 9, we learned that the WTC Captive Insurance Co., Inc., has filed a law suit against a number of the contractors' insurance carriers for bad faith denials of coverage. We are encouraged by this news, as it indicates that the WTC Captive is beginning to realize that the billion dollar fund set aside by Congress for these claims is not the sole source of monies to pay the many thousands of claims already lodged against the City and its Contractors.

CONCLUSION

As you can see from the foregoing, there are a great many active fronts in the WTC litigations, all of which we are managing effectively and, in most part, successfully. We encourage you to continue referring your clients for inclusion in the WTC litigations where appropriate. The Courts have thus far agreed that the latent nature of Ground Zero-related illnesses precludes a summary finding of untimeliness.

Please don't hesitate to call me if you have any questions. We will make copies of all relevant decisions and documents available on our website: www.wgenblaw.com.

Very truly yours,

WORBY GRONER EDELMAN & NAPOLI BERN, LLP

Paul J. Napoli

EXHIBIT "E"

Worby Groner Edelman & Napoli Bern LLP

A Partnership of Limited Liability Partnerships 350 Fifth Avenue, Suite 7413 New York, New York 10118 (212) 267-3700

www.wgenblaw.com

PAUL J. NAPOLI SENIOR PARTNER PNAPOLI@NAPOLIBERN.COM

June 20, 2008

VIA FACSIMILE (212) 697-9284

Rosenberg Minc Falkoff & Wolff, LLP 122 East 42nd Street, 38th Floor New York, NY 10168

Re: Ground Zero Litigation

To whom it may concern:

Our office is working with the defendants and the court in the above referenced matter. Please find attached a list of cases in which your office represents. Please advise our office as to the status of each case, whether the client received monies from the Victims Compensation Fund, if the case is active, resolved, or otherwise.

Please fax back the status of each case by 4:00pm Tuesday June 24th to 212-513-7320. If you have any questions please contact the undersigned.

Very truly yours,

WORBY GRONER EDELMAN & NAPOLI BERN LLP

Paul J. Napoli

cc: Andrew Carboy, Esq.

Jun 20 08 03:01P Case 1:21-mc-00100-AKH Document 3089 Filed 08/21/13 Page 112 of 125

p. 2

WTC - Rosenburg Minc Falkoff & Wolff Cases

Law Firm Rosenburg, Minc, Falkoff & Wolff	Ana L. Taha	Short Name 02cv05288	Consolidated
		그리 회원	

EXHIBIT "F"

Worby Groner Edelman & Napoli Bern LLP

A Partnership of Limited Liability Partnerships 350 5th Avenue, Suite 7413 New York, New York 10118 (212) 267-3700

www.wgenblaw.com

Paul J. Napoli Senior Partner Pnapoli@Napolibern.com

July 10, 2008

VIA FACSIMILE (212) 697-9284

Carmen Mesorana, Esq. Rosenberg Minc Palkoff & Wolff, LLP 122 East 42nd Street, 38th Floor New York, NY 10168

Re: Ground Zero Litigation

Dear Ms. Mesorana:

The parties are in the process of preparing an "injury severity matrix chart" in order to comply with the Judge Hellerstein's request to classify each plaintiff based upon their injuries.

The parties are endeavoring to include all plaintiffs on this list, but need to know the nature and extent of each plaintiff's injuries. Please provide a brief description of each of your client's injuries and whether the injuries are orthopedic (please describe sufficient detail), respiratory (if respiratory, provide upper or lower and PFT results, if any), GERD or any other injuries. This information will remain confidential between plaintiffs and not be disclosed to defendants or with the Court and will be used solely to make sure all plaintiffs' injuries are captured on the injury severity matrix.

Please fax back this information as soon as possible to (212) 513-7320. If you have any questions please contact the undersigned or my assistant Betsy Barranco.

Very truly yours,

WORBY GRONER EDELMAN & NAPOLI BERN LLP

l Rapoli/BB

Paul J. Napoli

EXHIBIT "G"



CARMEN A. MESORANA ARTHUR O. TISI*** SHARON ELMALEH SCHOENMAN

LEGAL ASSISTANTS

JOY RUBIN BERMAN LORRAINE ZAHTILA-LICUL INGRID D. JOHNSSON Advocating justice for three generations.

122 East 42nd Street Suite 3800 New York, New York 10168

TELEPHONE: 212-697-9280 FAX: 212-697-9284 EMAIL: lawyers@rmfwlaw.com

October 10, 2011

FOUNDERS

Gustave G. Rosenberg (1900-1988) Morton M. Berger

OF COUNSEL

(1915-1991)

SEYMOUR ARMSTRONG ARI KRESCH

*Member; NY, CA Bar

**Member; NY, CT, FL Bar

***Member; NY, NJ Bar

Christopher Lopalo, Esq. Napoli, Bern, Ripka, Shkolnik, LLP 350 Fifth Avenue, Suite 7413 New York, New York 10118



Re: Ana Taha Our File No. 27137

Dear Mr. Lopalo:

Rosenberg, Minc, Falkoff & Wolff, LLP are the referring attorneys in the above matter. We understand from Ms. Taha that she has received partial payment on her settlement.

Kindly advise when we can expect to receive payment reflecting our referral fee.

Thank you for your attention to this matter.

Very truly yours,

CARMEN MESORANA

CM: sm

EXHIBIT "H"



Carmen A. Mesorana Arthur O. Tisi*** Sharon Elmaleh Schoenman

LEGAL ASSISTANTS

Joy Rubin Berman Lorraine Zahtila-Licul Ingrid D. Johnsson ADVOCATING JUSTICE FOR THREE GENERATIONS.

122 East 42nd Street Suite 3800 New York, New York 10168

TELEPHONE: 212-697-9280 FAX: 212-697-9284 EMAIL: lawyers@rmfwlaw.com

May 29, 2012

FOUNDERS

Gustave G. Rosenberg (1900-1988)

Morton M. Berger (1915-1991)

OF COUNSEL

SEYMOUR ARMSTRONG ARI KRESCH

*Member; NY, CA Bar

**Member; NY, CT, FL Bar

***Member; NY, NJ Bar

Christopher Lopalo, Esq. Napoli, Bern, Ripka, Shkolnik, LLP 350 Fifth Avenue, Suite 7413 New York, New York 10118

> Re: Ana Taha (11158) Our File No. 27137

Dear Mr. Lopalo:

Rosenberg, Minc, Falkoff & Wolff, LLP are the referring attorneys in the above matter. We understand from Ms. Taha that she has received full payment on her settlement.

Kindly advise when we can expect to receive payment reflecting our referral fee.

Thank you for your attention to this matter.

Very truly yours,

CARMEN A. MESORANA

CM: sm

EXHIBIT "I"

4967	U.S. Postal Service IM CERTIFIED MAIL MAIL RECEIPT (Domestic Only) No Insurance Coverage Provided) For delivery information visit our website at www.usps.com					
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ப	E CONTRACTOR LA					
522	Postage	\$				
	Certified Fee					
1000	Return Receipt Fee (Endorsement Required)		Postmark Here			
	Restricted Delivery Fee (Endorsement Required)					
1150	Total Postage & Fees	\$				
Sent To Attn: Christopher Lopalo, Esq. Napoli, Bern, Ripka, Shkolnik, LLP Street, Apt. No.; Empire State Building or PO Box No. 350 Fifth Ave Ste. 7413						
City, State, ZIP+4 New York, N.Y. 10118						
1	PS Form 3800, August 2006 See Reverse for Instructions					

CARMEN A. MESORANA ARTHUR O. TISI*** SHARON ELMALEH SCHOENMAN

LEGAL ASSISTANTS JOY RUBIN BERMAN LORRAINE ZAHTILA-LICUL INGRID D. JOHNSSON

ADVOCATING JUSTICE FOR THREE GENERATIONS.

122 East 42nd Street Suite 3800 New York, New York 10168

TELEPHONE: 212-697-9280 Fax: 212-697-9284 EMAIL: lawyers@rmfwlaw.com **FOUNDERS**

GUSTAVE G. ROSENBERG (1900-1988)MORTON M. BERGER (1915-1991)

OF COUNSEL

SEYMOUR ARMSTRONG ARI KRESCH

*Member; NY, CA Bar **Member; NY, CT, FL Bar ***Member; NY, NJ Bar

October 22, 2012

BY CERTIFIED MAIL RRR and REGULAR MAIL

Christopher Lopalo, Esq. Napoli, Bern, Ripka, Shkolnik, LLP 350 Fifth Avenue, Suite 7413 New York, New York 10118

> Re: Ana Taha (11158) Our File No. 27137

Dear Mr. Lopalo:

This letter is being sent in follow-up to the letters dated October 10, 2011 and May 29, 2012, to which we have received no response. This office was the referring attorneys in the above matter. Ms. Taha received has full payment on her settlement, as evidenced by the stub annexed hereto. It is noted on the stub that no referral fee was paid despite your office receiving a fee of \$7,840.98. It is also my understanding that this stub reflects only partial payment of all monies paid to Ms. Taha.

Therefore, a full accounting of all sums made payable to Ms Taha is hereby demanded and the appropriate referral fees are hereby demanded.

A further failure to respond to this office will be reported to the Court for appropriate action. I trust that this will not be necessary.

Thank you for your attention to this matter. (C'0)

Very truly yours,

STEVEN C. FALKOFF

SCF/ar

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118564

	Gross Payment:		\$32,021.60
Ni	BA/WGE Costs Payment:	\$657.66	
	Client Costs Payment:	\$657.66	
Settle	ment Value Less Costs:		\$31,363.94
A	Attorneys Fee Payment:	25.00%	\$7,840.98
	NBA Fee:	\$3,920.49	
	WGE Fee:	\$3,920.49	
	Referral Attorney Fee:	\$0.00	
	Co-Counsel Fee:	\$0.00	
	Cilent Liens/Holdback:		\$0.00
6.0	Client Payment:		\$23,522.96

Ana Taha(11158) Client Settlement Check

Worby, Groner, Edelman & Napoli Bern LLP Consolidated 911 Account B (The Claimant Account) FBO 911 First Responders Attorney Master Escrow Account

1185

Ana Taha P.O. Box 3438 Astoria, NY 11103-

For Tier 2 and 3 plaintiffs, this check represents your final Captive Settlement payment. For plaintiffs in Tier 4, this is the second portion of your payment of settlement funds under that Settlement Agreement with the WTC Captive. If you are entitled to further settlement funds from agreements with other settling defendants (the Barge/Marine Defendants; the Fresh Kills Defendants, the Port Authority, etc.), those funds will be calculated and forwarded separately as those settlements are processed.

The three categories of Costs that have been deducted from your accelerated "gross" settlement amount have been reviewed by Allocation Neutral Matthew Garretson, pursuant to the Allocation Neutral Procedure, Exhibit 1 to the Court's June 10, 2010 Order. The 25% attorneys' fee is deducted from the remaining "Net Settlement".

Ana Taha(11158) Client Settlement Check

PRODUCT DLT103

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EXHIBIT "J"



CARMEN A. MESORANA ARTHUR O. TISI*** SHARON ELMALEH SCHOENMAN

LEGAL ASSISTANTS

JOY RUBIN BERMAN LORRAINE ZAHTILA-LICUL INGRID D. JOHNSSON ADVOCATING JUSTICE FOR THREE GENERATIONS.

122 East 42nd Street Suite 3800 New York, New York 10168

Telephone: 212-697-9280 Fax: 212-697-9284 Email: lawyers@rmfwlaw.com

FINAL REQUEST

FOUNDERS

GUSTAVE G. ROSENBERG (1900-1988) MORTON M. BERGER (1915-1991)

OF COUNSEL
SEYMOUR ARMSTRONG

ARI KRESCH

*Member; NY, CA Bar

Member; NY, CT, FL Bar *Member; NY, NJ Bar

November 26, 2012

Napoli, Bern, Ripka, Shkolnik, LLP Empire State Building 350 Fifth Avenue - Ste. 7413 New York, N.Y. 10118

Attn: Christopher Lopalo, Esq.

Re:

Ana Taha (11158)

D/A: September 13, 2001

Our File No. 27137

Dear Mr. Lopalo:

On October 10, 2011, our office advised you that we are the referring attorney in the above matter. We further advised you that we expect to receive payment reflecting our referral fee in the above matter. Unfortunately, after several letters, you have not responded in any way to these inquiries. Enclosed are copies of all previous correspondence pertaining to this matter.

In order to protect our interest, we must advise you that unless we receive a response from you within twenty (20) days from the date of this letter, we will have no alternative but to pursue other legal remedies available to us in order to obtain our referral fee payment.

We trust that this will not be necessary and that your cooperation will be forthcoming.

We await your early reply.

Very truly yours,

STEVEN C. FALKOFF

SCF/vl Enclosure Via Regular & Certified Mail-RRR

EXHIBIT "K"